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IN BUSINESS ON THE COASTAL AND INLAND WATERS

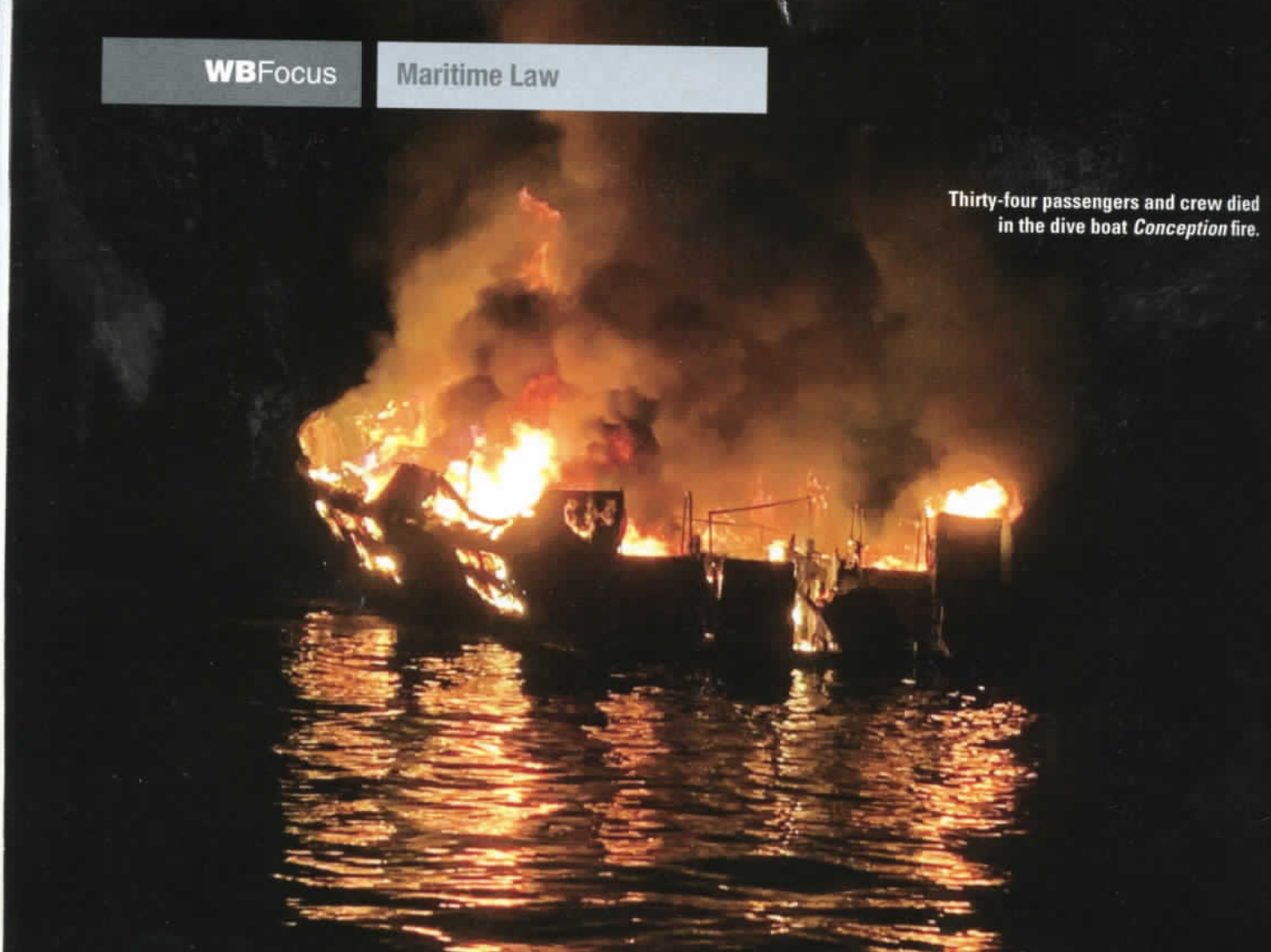
FEBRUARY 2020

## All Aboard

*Demand for passenger vessels stays steady.*



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Thirty-four passengers and crew died in the dive boat *Conception* fire.

# Outer Limits

## *Understanding the Limitation of Liability Act.*

By Betsy  
Frawley  
Haggerty,  
Correspondent

Three days after the September fire aboard the dive boat *Conception* off the coast of California killed 34 people, the boat's owners filed a petition in U.S. District Court to limit their financial liability to an amount equal to the post-fire value of the boat — zero. The filing drew national attention with the media questioning how this could be legal.

The answer is an 1851 law known as the Limitation of Liability Act (LOLA), which comes into play in many admiralty cases.

This is not to say the dive boat owners will prevail. They have to prove they had no knowledge — or could have had no constructive knowledge — of the conditions that caused the fire and the deaths. This can be difficult to prove. Unlike the 19th century when owners sent ships to sea

and had no way of knowing where they were or what happened aboard until the ship reached port months later, today's vessel owners can be in near constant contact with the captain and crew operating the vessel.

The Coast Guard has launched a criminal investigation into the *Conception* fire. The National Transportation Safety Board and other federal and state agencies are assisting the Coast Guard and conducting their own investigations. Those reports will not be available for several months. Meanwhile court proceedings continue.

### AMEND THE LAW?

Maritime law is complicated because different laws, such as Death on the High Seas Act, the Jones Act, and other state and federal statutes,

Santa Barbara County Sheriff's Office





The owners of the dive boat *Conception* filed a petition in court to limit their financial liability.

Ventura County Fire Department

apply in different cases. By the time the *Conception* tragedy is adjudicated some of these other laws will likely come into play. But this tragedy is a good jumping off point for a look at limitation of liability.

Paul M. Sterbcow, an expert in admiralty law and a managing member of **Lewis, Kullman, Sterbcow & Abramson LLC**, New Orleans, used the *Conception* case as an example of what is wrong with the Limita-

tion of Liability Act when he testified before the House of Representatives in November. He recommended that the law be amended to "remove the vessel owner's ability to limit its liability to the vessel's value in cases of personal injury or death to passengers and crew."

Sterbcow began his remarks before the House Coast Guard and Maritime Subcommittee with an explanation of the law's history. He said that the purpose of the law when enacted in 1851 and updated in subsequent years was to "encourage shipbuilding and protect an otherwise innocent shipbuilder from catastrophes at sea over which the shipowner had no control or ability to prevent. ... Congress decided that shipowners needed liability protection to ensure their profitability and encourage investment in maritime commerce."

"This law has no place in the mari-



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